CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70646/01
by Kazys VISOCKAS and Others
against Lithuania

The European Court of Human Rights (Third Section), sitting on 24 November 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Ms I. ZIEMELE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 6 March 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are 11,528 (eleven thousand five hundred twenty eight) Lithuanian farmers. They are represented by the first applicant, Mr Kazys Visockas, a Lithuanian national living in Biržai region.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants are farmers who produce grain, milk and meat. They submit that during the year 1999 they were entitled to State subsidies the conditions of payment of which were provided for by the relevant orders of the Minister of Agriculture of 31 December 1998, 13 February and 18 June 1999 (see the 'Relevant domestic law and practice part' below).

The applicants submit that subsidies for the year 1999 should have been calculated and paid by the Ministry of Agriculture every month of that year, upon presentation by a farmer of the evidence of his having sold grain, milk or meat to food-processing companies. The Government deny that the authorities had been required to examine and satisfy every application for subsidies for the year 1999 on a one-month or other basis, the impugned orders establishing no time-limits in this respect (see below).

During the period of six months in 1999, regardless of the proof of the applicants' selling their production, the Ministry of Agriculture did not examine their applications for subsidies.

In December 1999 and January 2000 the applicants submit that they applied to courts, requesting the Ministry of Agriculture to calculate and pay monthly subsidies for the year 1999. The applicants have submitted no evidence as to how many of them did apply to the courts in this respect. They have presented one case, involving a group of 21 applicants, concerning the claim against the Ministry of Agriculture in this connection:

On 9 March 2000 the Supreme Administrative Court rejected the claim of the 21 applicants, having found no fault in the actions of the Ministry of Agriculture. The court established that subsidies for the year 1999 were not calculated and paid by the Ministry of Agriculture during only a few months of that year. However, the court held that the Ministry of Agriculture was in no fault in this respect. It was established that as a result of the Governmental decree of 13 December 1999 the payment of subsidies for the year 1999 was postponed until 1 July 2000.

On 2 May 2000 the Court of Appeal rejected the appeal submitted by FB, one person belonging to the group of the 21 applicants. The Court of Appeal held that in 1999 there had been no statute requiring the Ministry of Agriculture to calculate and pay subsidies every month, the authorities being free to delay the calculation and payment thereof.

In July 2000 the Ministry of Finance paid 228 million Lithuanian litai (LTL) to satisfy the applications for subsidies submitted in 1999.

B. Relevant domestic law and practice

According to the legal provisions applicable at the material time, subsidies for grain for 1999 were to be paid on the basis of the order made by the Minister of Agriculture of 18 June 1999. Subsidies for meat and milk were to be paid on the basis of his orders of 31 December 1998 and 13 February 1999.

On 13 December 1999 the Government adopted a decree whereby it decided that all the remaining applications for subsidies for the year 1999 were to be examined until 1 July 2000.

COMPLAINTS

1. Under Article 6 of the Convention the applicants complained that they had been refused the right to a court to obtain redress for the failure of the authorities to calculate and pay subsidies every month of 1999. They further complained that the Governmental decree of 13 December 1999 denied the possibility for them to claim the authorities' fault in this connection.

2. Under Article 1 of Protocol No. 1 the applicants also complained that their property rights had been violated in that subsidies for the year 1999 had not been paid to them on a monthly basis.

THE LAW

1. The applicants complained under Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submitted that the authorities had not been obliged to calculate and pay subsidies for the year 1999 on a monthly or other basis, all these subsidies having been eventually paid according to the time-table established by the decree of 13 December 1999.

The applicants disagreed, claiming that subsidies for the year 1999 should have been calculated and paid to them every month of that year.

The case appears to warrant rejection on the non-exhaustion basis (Article 35 § 1 of the Convention) to the extent that it has been brought by other persons than the group of 21 applicants who applied to a court to defend their claims about the delay in the payment of subsidies for the year 1999. Furthermore, in accordance with Article 35 § 1 of the Convention, only one of the applicants, FB, can be considered as having exhausted all domestic remedies in appealing against the first instance decision of 9 March 2000. However, even the application brought by FB would appear to be presented out of time, the final decision in his case being taken on 2 May 2000, while the application being introduced only on 6 March 2001, that is more than six months later. In any event, even assuming that the requirements of Article 35 § 1 were respected in the present case, the case should be declared inadmissible for the following reasons.

The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Jasiūnienė v. Lithuania*, no. 41510/98, 6.3.2003, § 44). The Court therefore considers that the right to receive a pecuniary benefit, such as an agricultural subsidy, can be considered as a "possession" insofar as it is established to be based in domestic law.

The Court notes however that the applicants do not allege that the agricultural subsidies to which they are entitled under the law have not been calculated and paid to them. In fact, the applicants do not deny that all the requested subsidies for the year 1999 have been paid to them (see the 'Facts' part above). The applicants' complaint is limited to the allegation that the authorities were obliged to calculate and pay subsidies requested in 1999 on a monthly basis in the course of that year, and that the authorities failed that obligation.

The Court observes however that the domestic courts established that there was no statute requiring the authorities to calculate and pay subsidies for the year 1999 on a monthly basis, the institutions being free to choose the time-table for examining the applicants' applications for subsidies, the deadline being eventually established by way of the Governmental decree of 13 December 1999 (see the 'Facts' part above). There is no reason for the Court to depart from the domestic courts' interpretation of the relevant domestic provisions, there being no indication of arbitrariness in their interpretation, or lack of procedural fairness in the domestic procedures leading to the adoption of the impugned court decisions.

As the Governmental decree of 13 December 1999 established the date of 1 July 2000 as the deadline for the calculation and payment of subsidies due for the year 1999, the Court finds that there has been no interference with the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1 in view of the authorities' failure to calculate and pay subsidies for the year 1999 before the above-mentioned deadline.

It follows that this part of the application would in any event be incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 thereof.

2. To the extent that the applicants alleged absence of the right to a court, which is guaranteed by Article 6 of the Convention, in regard to the authorities' failure to calculate and pay subsidies for the year 1999 on a monthly basis, the question arises whether the impugned action concerned "civil" rights of the applicants within the meaning of Article 6 of the Convention. The Court considers it unnecessary to determine this question because, even assuming that Article 6 applied in regard to the applicants' claims, this complaint would in any event be rejected as clearly unsubstantiated in that the applicants had access to a court, but only one of them, FB, fully availed himself of that opportunity provided for by the domestic law (also see above). It follows that this part of the application should be rejected under Article 35 §§ 1 and 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President